

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| AT&T Services, Inc. |) | File No.: EB-FIELDWR-13-00008160 |
| |) | NAL/Acct. No.: 201432900002 |
| Owner of Antenna Structure in |) | FRN: 0018716266 |
| San Pedro, California |) | |
| |) | |
| |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 26, 2014

Released: February 27, 2014

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that AT&T Services, Inc. (AT&T), apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act), and Sections 17.4(a) and 17.21(a) of the Commission's rules (Rules),¹ by failing to register the Antenna Structure² located at 425 W. 5th Street in San Pedro, California, with the Commission, and paint and light the Antenna Structure. We conclude that AT&T is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000).

II. BACKGROUND

2. On April 2, 2013, in response to a complaint from the Los Angeles Police Department concerning an unlit antenna structure located at 425 W. 5th Street in San Pedro, California, an agent of the Enforcement Bureau's Los Angeles Office (Los Angeles Office) inspected the Antenna Structure, accompanied by a representative of AT&T. The total vertical height of the building and the unmarked and unlit Antenna Structure, including a twenty-foot whip antenna attached to the Antenna Structure, was approximately 210 feet. The AT&T representative concurred with these calculations and on April 8, 2013, AT&T notified the Los Angeles Office that the whip antenna had been removed and that the total vertical height of the building and Antenna Structure was now 188 feet.

3. On May 9, 2013 the Los Angeles Office issued a Notice of Violation to Pacific Bell Telephone Company³ for violations of Sections 17.7 and 17.4(a) of the Rules.⁴ In the NOV Response,

¹ 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.4(a), 17.21(a).

² Pursuant to Section 17.2(a) of the Rules, "[t]he term antenna structure includes the radiating and/or receive system, its supporting structures and any appurtenances mounted thereon." 47 C.F.R. § 17.2(a).

³ Pacific Bell Telephone Company (PBTC) was listed in Los Angeles County real estate records as the owner of the property where the Antenna Structure was located. Therefore, the referenced Notice of Violation was issued to PBTC. AT&T responded to the Notice of Violation, on behalf of its affiliate, PBTC, stating that AT&T Services, Inc., has operational control over Pacific Bell Telephone Company's tower operations. Consequently, this NAL is being issued to AT&T. See Response to Notice of Violation by AT&T Services, Inc. (June 12, 2013) (on file in EB-FIELDWR-13-00008160) (NOV Response) at 3.

⁴ *Pacific Bell Telephone Company*, Notice of Violation, V201232900020 (May 9, 2013). Section 17.7 of the Rules (continued....)

AT&T stated that the combined height of the Antenna Structure and the building, when the Antenna Structure was originally constructed, was 188 feet but that the twenty foot whip antenna was added in November 2012 which increased the combined height to 208 feet.⁵ AT&T acknowledged that a notification to the Federal Aviation Administration (FAA) should have been filed before the whip antenna was installed and that the Antenna Structure was not registered with Commission when the whip antenna was installed.⁶

III. DISCUSSION

4. Section 503(b) of the Act, provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁷ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁸ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁹ and the Commission has so interpreted the term in the Section 503(b) context.¹⁰ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹¹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹²

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requires, among other things, a “notification to the Federal Aviation Administration is required, except as set forth in §17.14, for any of the following construction or alteration: (a) Any construction or alteration of more than 60.96 meters (200 feet) height above ground level at its site.”

⁵ NOV Response at 2.

⁶ NOV Response at 2.

⁷ 47 U.S.C. § 503(b).

⁸ 47 U.S.C. § 312(f)(1).

⁹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms”).

¹⁰ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹¹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹² Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

A. Failure to Register Antenna Structure and Failure to Paint and Light Antenna Structure

5. The evidence in this case is sufficient to establish that AT&T violated Section 303(q) of the Act and Sections 17.4(a) and 17.21(a) of the Rules. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.¹³ Section 17.4(a) requires that the owner of any proposed or existing antenna structure that requires notice of proposed construction to the FAA must register the structure with the Commission.¹⁴ Section 17.21(a) of the Rules states that antenna structures shall be painted and lighted when they exceed 60.96 (200 feet) in height above ground or require special aeronautical study.¹⁵ At the time of the Los Angeles Office's April 2, 2013, inspection, the Antenna Structure was 208 feet in height above ground level. AT&T acknowledged that the structure was 208 feet in height beginning in November 2012 and that notification to the FAA was required for the structure. The investigation revealed, however, that the Antenna Structure was not registered with the Commission and was not painted or lighted from November 2012 until the twenty-foot whip antenna was removed from the structure on April 8, 2013. Based on the evidence before us, we find that AT&T apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.4(a) and 17.21(a) of the Rules by failing to register the Antenna Structure and by failing to paint and light the Antenna Structure between November 2012 and April 8, 2013 when the structure exceeded 200 feet.

B. Proposed Forfeiture Amount

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules,¹⁶ the forfeiture amount for failure to register the tower by not filing the required forms or information is \$3,000, and failure to comply with lighting and/or marking is \$10,000.¹⁷ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁸ We therefore conclude that AT&T is apparently liable for a total base forfeiture of \$13,000. We also recognize that AT&T is a multi-billion dollar enterprise,¹⁹ and to ensure that forfeiture liability is a deterrent and not simply a cost of doing business, the Commission has determined that large or highly-profitable companies such as AT&T should expect the assessment of higher forfeitures for violations.²⁰ In the final analysis and based on all the factors and evidence, including AT&T's size and

¹³ 47 U.S.C. § 303(q).

¹⁴ 47 C.F.R. § 17.4(a).

¹⁵ 47 C.F.R. § 17.21(a).

¹⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁷ See *Verizon Wireless (VAW) LLC*, Forfeiture Order, 25 FCC Rcd 102 (Enf. Bur. 2010) (assessing a forfeiture of \$13,000 for failure to register, and paint and light, an antenna structure that exceeded 200 feet).

¹⁸ 47 U.S.C. § 503(b)(2)(E).

¹⁹ AT&T, Inc., reported operating revenues of \$127,434,000,000 for 2012. See AT&T 2012 Annual Report at 30.

²⁰ See, e.g., *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100, paras. 23-24 (cautioning all entities and individuals that, independent from the uniform base forfeiture amounts, the Commission will take into account the subject violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business, and noting that such large or highly profitable entities should expect that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount); *Google Inc.*, (continued....)

ability to pay a forfeiture, we conclude that an upward forfeiture of \$12,000 is appropriate. Applying the Forfeiture Policy Statement, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that AT&T is apparently liable for a total forfeiture in the amount of \$25,000.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, AT&T Services, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of Section 303(q) of the Act and Sections 17.4(a) and 17.21(a) of the Rules.²¹

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, AT&T Services, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. AT&T Services, Inc., shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²² When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

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Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (Enf. Bur. 2012) (upwardly adjusting the base forfeiture due to the deliberate nature of the violation and the company's gross revenues); *America Movil, S.A.B. de C.V., Parent of Puerto Rico Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8672 (Enf. Bur. 2011) (doubling the base forfeiture due to the company's size and gross revenues); *Fox Television Stations Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074 (Enf. Bur. 2010) (upwardly adjusting the base forfeiture based on the egregiousness of the violation and the company's substantial revenues).

²¹ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.4(a), 17.21(a).

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

10. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²³ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²⁴ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Rd., Suite 660, Cerritos, CA 90703, and include the NAL/Acct. No. referenced in the caption. AT&T Services also shall e-mail the written response to WR-Response@fcc.gov.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and first class mail to AT&T Services, Inc., 1120 20th St. N.W., Suite 1000, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Charles A. Cooper
District Director
Los Angeles Office
Western Region
Enforcement Bureau

²³ See 47 C.F.R. § 1.1914.

²⁴ 47 C.F.R. §§ 1.16, 1.80(f)(3).